

REMARKS

I. Introduction

Claims 1 to 25 are pending in the present application with claims 1 to 20 elected for prosecution. Claims 1 to 20 stand rejected. In view of the following remarks, it is respectfully submitted that claims 1 to 20 are allowable, and reconsideration is respectfully requested.

II. Rejection of Claims 1 to 20 Under 35 U.S.C. §102(g) or in the alternative 35 U.S.C. § 103(a)

Claims 1 to 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,448,462 ("Groitzsch et al."). Applicants respectfully submit that Groitzsch et al. do not render obvious claims 1 to 20 for the following reasons.

Applicants respectfully note that Groitzsch et al. provide a patent date of September 10, 2002 on a filing date of January 26, 2001. Groitzsch et al. seek foreign priority to February 28, 2000. Applicants further note that the current application has a filing date of January 12, 2001, prior to the filing date of Groitzsch et al. Applicants furthermore submit that the present application seeks priority to January 22, 2000, again predating Groitzsch et al. Acknowledgement of the claim to priority was provided in the Office Action Summary for the July 30, 2001 Final Office Action. Applicants respectfully submit that the current application predates the Groitzsch et al. reference and that the rejections to claims 1 to 20 under 35 U.S.C. §102(g) or in the alternative 35 U.S.C. §103(a) based upon Groitzsch et al. should be withdrawn.

III. Rejection of Claims 1 to 20 Under 35 U.S.C. § 103(a)

Claims 1 to 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,783,503 ("Gillespie et al.") in view of U.S. Patent No. 5,725,927 ("Zilg et al.") and Groitzsch et al. Applicants respectfully submit that the combination of Gillespie et al., Zilg et al. and Groitzsch et al. does not render obvious claims 1 to 20 for the following reasons.

Claim 1 relates to a cleaning cloth. Claim 1 recites a microfilament nonwoven weighing from 30 g/m² to 500 g/m², wherein the nonwoven is made from

melt-spun, stretched continuous multicomponent filaments having a titer of 1.5 to 5 dtex, which are immediately laid down to form a nonwoven, and the continuous multicomponent filaments after pre-bonding, are split at least to 80% to form continuous micro-filaments having a titer of 0.05 to 1.0 dtex and bonded. Claim 1 also provides that the filaments have an isotropic fiber distribution.

The Final Office Action alleges that Gillespie et al. teach a multicomponent thermoplastic continuous filament produced by meltspinning. The Final Office Action admits that Gillespie et al. do not disclose that the basis weight of the microfilament is from 30 g/m² to 500 g/m². Final Office Action page 5. The Final Office Action further admits that Gillespie et al. do not suggest or imply that multicomponent filaments are pre-bonded before splitting. Final Office Action page 6.

The Office Action alleges that Zilg et al. disclose a cloth for damp and dry cleaning of surfaces. The Office Action admits that Zilg et al. do not suggest or imply that multicomponent filaments are pre-bonded before splitting. Final Office Action page 6.

The Final Office Action uses the Groitzsch et al. reference to allegedly cure the defects of Gillespie et al. and Zilg et al. in disclosing a nonwoven made of continuous multicomponent filaments which are pre-bonded before splitting.

Applicants respectfully traverse the Final Office Action conclusion that it would have been obvious at the time of the invention was made to modify the cloths of Zilg et al. and Gillespie et al. in view of Groitzsch et al. As provided above, Groitzsch et al. actually provide a patent date of September 10, 2002 with a United States filing date of January 26, 2001. The current application predates the Groitzsch et al. reference. As the Final Office Action admits that the combination of Zilg et al. and Gillespie et al. does not disclose or suggest all of the features of claim 1, Applicants respectfully submit that the combination of references does not disclose or suggest the features of independent claim 1 at the time of the invention.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837

F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As indicated above, the combination of references does not disclose, or even suggest, all of the limitations of claim 1, namely a microfilaments which are prebonded before splitting.

Moreover, it is respectfully submitted that the cases of In re Fine, supra, and In re Jones, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Final Office Action's generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Final Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the reference relied upon. In particular, the Court in the case of In re Fine stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the present Final Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a "technologically simple concept" -- which is not the case here -- there still must be some finding as to the "specific understanding or principle within the knowledge of a skilled artisan" that would motivate a person having no knowledge of the claimed subject matter to "make the combination in the manner claimed," stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Again, it is believed that there have been no such findings.

Accordingly, there is no evidence that the references relied upon, whether taken alone, combined or modified, would provide the features and benefits of claim 1. It is therefore respectfully submitted that claim 1 is allowable for these reasons.

Claims 2 to 20 ultimately depend from claim 1 and therefore include all of the limitations of claim 1. Claims 2 to 20 should be patentable for at least the reasons presented in relation to claim 1.

IV. Rejection of Claims 1 to 20 Under Double Patenting

Claims 1 to 20 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 to 5 of Groitzsch et al. Applicants respectfully submit that the rejection of claims 1 to 20 should be withdrawn for the following reasons.

Applicants herewith file a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) to overcome the provisional double-patenting rejection. Applicants respectfully submit that the alleged "conflicting" patent is commonly owned with this application. Applicants respectfully submit that the terminal disclaimer overcomes the rejection. Applicants respectfully request withdrawal of the rejections to claims 1 to 20 based upon the judicially created doctrine of obviousness-type double patenting to Groitzsch et al.

V. Conclusion

It is therefore respectfully submitted that all pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

KENYON & KENYON

Dated: September 9, 2003

By: 

Richard L. Rosati
Reg. No. 31,792
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646
PATENT & TRADEMARK OFFICE